

GENERAL SERVICES ADMINISTRATION  
PUBLIC BUILDINGS SERVICE  
SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL AGREEMENT      DATE  
No. 4      March 7      , 2011  
TO LEASE NO. GS-11B-01853 (the "Lease")

ADDRESS OF PREMISES: NOAA Center for Weather and Climate Prediction Facility  
5830 University Research Court  
Riverdale, MD 20737 (the "Project")

**THIS AGREEMENT**, made and effective as of the date noted above by and between **Douglas P. Wilson**, Receiver of the assets of **Maryland Enterprise, L.L.C., a Delaware Limited Liability Company (the "Receiver")**, pursuant to "Receivership Order" (as defined below) issued by the Circuit Court for Prince Georges County, Maryland (the "State Court") whose address is:

Douglas P. Wilson  
Douglas Wilson Companies  
450 B Street, Suite 1900  
San Diego, California 92101

and the **UNITED STATES OF AMERICA**, hereinafter called the "Government."

**This Supplemental Lease Agreement** (this "SLA") is issued under the authority of and pursuant to the terms of, that certain Consent Order Appointing Receiver ("Receivership Order"), a copy of which is attached hereto as Attachment I, issued by the Honorable Thomas P. Smith of the State Court on August 13, 2009 in Case No. CAE09-22511, and agreed to by Bank of America, N.A. (together with its successors and assigns, the "Lender"), and the Lessor.

**ACKNOWLEDGED**, the authorized signatories of the Receiver and the Government (collectively referred to hereinafter as the "Parties") acknowledge all of the following:

- a) That the Government and Maryland Enterprise, L.L.C., a Delaware limited liability company (the "Lessor") entered into a Lease dated September 2, 2005 for the construction of the Project;
- b) That in accordance with SLA #2, Lessor was obligated to complete the construction of the base building and tenant improvements with substantial completion of the building to be achieved no later than July 22, 2009;
- c) That all claims concerning delays to the project caused by any action or failure to act by the Government or the Lessor prior to June 2, 2008 were waived by the Government and the Lessor under the terms of SLA #3; and under SLA #3 the parties reserved monetary dispute rights concerning specific tenant improvements or tenant initiated changes to base building design, and generally reserved all rights to the parties to pursue claims regarding any action or failure to act by the Government and the Lessor after June 2, 2008, except as specifically stated otherwise;
- d) That the Lessor commenced a partial stop-work on November 21, 2008 and stopped making any substantial progress on the construction work related to this lease on or about December 15, 2008, and therefore failed to deliver the project in accordance with the terms of the lease;

- e) That the Lessor filed a Complaint for Declaratory Relief in the United States Court of Federal Claims against the Government ("Federal Litigation") on May 12, 2009, requesting, among other things, that certain Tenant Improvements ordered by the Government be declared "out of scope changes" and requesting a declaration that the Government's request for such Tenant Improvements constituted a breach of contract;
- f) That the Lessor's former sole member and General Contractor, OPUS East, L.L.C., filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code on July 1, 2009 in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court");
- g) That the Lender responded by filing a Motion for Relief from the Automatic Stay on July 6, 2009 in the Bankruptcy Court, which motion was granted, and an Emergency Petition For Appointment of a Receiver in the State Court on August 13, 2009, which motion was also granted to the extent set forth in the Receivership Order;
- h) That the Receivership Order grants to the Receiver, to the exclusion of all others, the power to negotiate the terms of this lease contract with GSA for the benefit of the Lender and the Lessor, as Agent of the Lessor under the Indemnity Deed of Trust granted by the Lessor to the Lender on or about April 21, 2008;
- i) That the Receivership Order obligates the Receiver to have as his goal the preservation of this lease contract and the completion of the construction required under this lease, including all tenant improvements;
- j) That the terms of this SLA have been negotiated by the Receiver with the Government, in consultation with the Lender, for the purpose of providing a means of curing all defaults between the parties, resolving all contract interpretation disputes, resolving all delay and monetary claims arising prior to the execution date of this SLA, and establishing terms to allow the completion of construction and the occupancy of the leased premises by the Government;
- k) That it is the understanding of the Parties that, upon State Court approval of the terms and conditions of this SLA, the State Court will authorize the Receiver, Douglas P. Wilson, as authorized signatory, to execute this Agreement, and that upon such execution by the Receiver and the Government, this SLA will be binding on the Receiver, the Lessor, the Government and any or all of their respective agents, purchasers, transferees, assigns or other successors in interest for all contractual purposes including for purposes of implementation of that certain Subordination, Non-Disturbance and Attornment Agreement (the "SNDA"), entered into on April 21, 2008 by the Government, the Lender and the Lessor;
- l) That the Lease provides at Paragraph 6.A(ii) of GSA Form SF-2 (the "SF2") made a part of the Lease for a Tenant Improvement Allowance of \$10,820,880.00 (based upon \$47.88 per usable square foot) for Tenant Improvements, as defined in the Lease, to be included as part of the rental to be paid by the Government (the "TI Allowance");
- m) That the Government and the Receiver agree that the Government's awards for the Tenant Improvements, as well as certain base building and tenant improvement changes in the amount of \$25,531,139.00, which amount includes the Lessor/Receiver's Markup, in accordance with Clauses 33

and 34 of the Credit lease General Clauses, GSA Form 3517X, ("General Clauses") and Section 1.9 of the SFO of the Lease, have been verified, and that a list of such award letters is attached and made a part hereof as Attachment II (the "Original Award Letters");

- n) That the Government and Receiver have agreed to a certain Schedule of Values (the "SOV"), which SOV is attached to and made a part hereof as Attachment III, reflecting the amounts due for the listed line items of work and the corresponding amount to be paid, minus retainage, in advance of substantial completion, as the work is performed and as further described below;
- o) That the aggregate amount of payments contemplated to be made in advance of substantial completion and delivery of space to the Government is substantial, and, in order to agree to such, the Government must obtain adequate security to ensure that substantial completion and occupancy will be achieved;
- p) That the Receiver will provide, as a condition of this SLA, adequate security in the form of a Performance Bond, as further described below;
- q) That the Government and Receiver agree that all pricing of base building and tenant improvement costs are based on the wage scale identified as David Bacon Davis Wage Decision Number MD030057 dated October 29, 2004; there shall be no requests for equitable adjustment of costs associated with this wage rate determination;
- r) That the Government no longer views the Lessor as a responsible party with the necessary technical team or financial wherewithal to complete the construction of the project as the primary developer as envisioned under the terms of this Lease;
- s) That it is the understanding of the Receiver that its general contractor, Skanska USA Building Inc. ("Skanska") currently intends to use most of the previous sub-contractors who worked on the Project;
- t) That the Receiver intends to finance the completion of the Project through "advance payments" from the Government and loans from the Lender, confirmation of which is made in Attachment IV hereto, which shall be executed by the Lender subsequent to the approval of the motion referenced in Paragraph 35 below ("Lender Confirmation Letter"); and
- u) The Parties acknowledge that the negotiated promises and forbearances, and other amendments to the lease terms and conditions, as further detailed herein, represent value to each party hereto and provide good and valuable consideration for both the exchange of promises contained herein and for the settlement of claims affected by this SLA.

**NOW THEREFORE**, the Parties, covenant and agree that the said Lease is amended effective as of the date of this SLA, as follows:

1. **Recitals.** Each of the foregoing recitals and representations is a material part of this SLA and is incorporated herein by reference.
2. **Amount of Payments in Advance of Substantial Completion.** The Government shall pay to the Receiver, at regular monthly intervals as further described below, payments of eighty-five percent (85%) of the amount allocated to any installed item as reflected in the negotiated SOV,

which SOV has been approved by the Receiver and the Government; and as the SOV may be amended in accordance with Paragraph 17 below. The Government shall make such payments as provided for in this SLA and in the amounts shown on the SOV minus fifteen percent (15%) retainage, which retainage shall be payable as set forth below.

3. **Procedure to Initiate Payment.** Except for the Completed Work as defined in Paragraphs 16(a) and (b) herein, the following procedure will be required to initiate payment. The Receiver's construction manager and the Government's Project Manager and Contracting Officer shall have frequent, periodic inspections of the construction progress. On or before the end of each calendar month (but not more frequently than once per month), the Receiver will provide the Contracting Officer with a preliminary written invoice ("Preliminary Invoice") outlining the portion of the work that has been performed during such month. Within five (5) business days after the Contracting Officer receives such Preliminary Invoice, the Contracting Officer shall inspect the work that is described in the Preliminary Invoice to determine if the work has been performed and shall either approve such invoice or shall provide the Receiver with reasonably detailed written comments concerning any item that is set forth on such invoice which the Contracting Officer reasonably determines has not been performed. After receiving the Contracting Officer's input, if any, the Receiver shall make necessary adjustments, if any, then issue a final, monthly invoice (the "Draw Request") to the Contracting Officer which sets forth the work that was performed during such month. The Government shall verify within five (5) business days that all necessary adjustments to the Preliminary Invoice were made for the Draw Request, if any, and then pay the sum stated in the Draw Request which the Contracting Officer reasonably confirms has been performed, less fifteen percent (15%) retainage, and such payment shall be accounted for as provided in Paragraph 4 below. The Government shall release the fifteen percent (15%) retainage and shall pay the same to the Receiver within forty-five (45) days of the Government's acceptance of Phase II as substantially complete. Within thirty (30) days of receipt of each payment, the Receiver and/or its agent(s) shall provide to the Government's Contracting Officer a release of lien from each contractor, subcontractor, sub-subcontractor and/or supplier associated with each specific payment. The release of lien shall be required for subcontracts totaling over \$25,000.00. The release of lien shall be notarized and warrant that "no other sums are claimed, that all laborers, subcontractors, and suppliers employed by him have been paid all sums previously due" for this specific payment completed as defined in the SOV. Such release of liens can be faxed to the attention of the Contracting Officer, at (202) 708-9920, followed by mailing the original(s) to:

Mr. Mark Stadskev  
Contracting Officer  
Triangle Service Center  
U.S. General Services Administration  
301 7th Street, SW, Suite 7660  
Washington, DC 20407

All payments to the Receiver by the Government pursuant to this SLA shall be made to an account established by the Receiver with the Lender.

4. **Effect of Payments in Advance of Substantial Completion.** The Receiver shall not be entitled

to any payment prior to performance of the work described in the Draw Request for which payment is requested. The Contracting Officer shall reasonably determine whether the work for which advance payment is requested has been performed in accordance with approved plans and specifications for such work, as described above. However, neither the Contracting Officer's determinations nor any payments made under Paragraph 3 or Paragraph 16 of this SLA shall constitute acceptance of space or acceptance of any portion of space as substantially complete under the requirements of Clause 10, *Delivery, Inspection and Acceptance*, Clause 12, *Progressive Occupancy*, or Clause 20, *Acceptance of Space*, of the General Clauses (GSA Form 3517X) made a part of the Lease or under any other provision of the Lease, as amended, related to the definition or procedures concerning the Government's acceptance of space as substantially complete.

5. **Prompt Payment.** An advance payment pursuant to Paragraph 3 or Paragraph 16 of this SLA is a contract financing payment under the Clause 23(c), *Prompt Payment, Interest Penalty*, of GSA Form 3517X made a part of the Lease. Within two (2) business days after date the Contracting Officer receives a proper Draw Request, the Contracting Officer shall submit such Draw Request to the designated payment office. The designated payment office will pay approved requests on or before the thirtieth (30th) day after receipt of the request for an advance payment by the designated payment office. The Parties agree that, for the purposes of this SLA only, Clause 23, *Prompt Payment*, of GSA Form 3517X is modified by this Paragraph and other paragraphs of this SLA; the agreements contained in this SLA control as to the method of request for payment, timeliness of inspection and determination, time to render payment, and interest penalty determination.
6. **Risk of Loss.** Before delivery of possession to the Government by the Receiver of Phase II, as defined in SLA #2 and as further modified herein, the receivership estate and Lessor shall bear the risk of loss for the Project, except to the extent the Government expressly assumes the risk.
7. **Reports and Government Access.** The Receiver shall promptly furnish any reports, certificates, and other pertinent information reasonably requested by the Contracting Officer for the administration of this SLA and to determine that the work described in a Draw Request has been performed. Notwithstanding any provision in the Lease to the contrary, the Receiver shall provide a project schedule to the Contracting Officer thirty (30) days after the Contingency has been satisfied and every thirty (30) days thereafter, which shall be for purposes of project management only.
8. **Mutual Waiver of Claims.** The Parties agree that: a) all outstanding claims related to delays to the project that either party may have otherwise had, as of the date hereof, (whether for additional time, or money, or liquidated damages or any other remedy that may have been available under the lease, in law or in equity), are hereby waived and are hereby resolved by implementation of a new schedule, as detailed in paragraph 13 herein; and that delay between the parties and any claims related to delays to the Project that either party may have in the future (whether for additional time, or money, or liquidated damages or any other remedy that may be available under the Lease or in law or in equity) shall be measured solely with respect to the new schedule; (b) that all disputed costs related to any tenant improvement or to any Government initiated change request to either a tenant improvement or the building shell, or for any other claim for money damages that either party may have otherwise had as of the date hereof, (except



as otherwise expressly reserved herein) are resolved by the award of additional money by the Government as detailed in paragraph 16 herein; and (c) that neither the Receiver, the Lender, the Lessor, nor any or all of their respective agents, purchasers, transferees, assigns or other successors in interest shall have any claim that a Tenant Improvement or Government initiated change, whether currently designed and priced or intended to be designed and priced as detailed in paragraph 17 herein, whether considered singly or in the aggregate, constitutes either an out-of-scope change to the lease or otherwise a Government breach of the lease. In addition, this waiver and release terminates any and all claims, if any, that were expressly reserved under SLA #3. The parties hereby waive and release any and all causes of action, claims, including, but not limited to, claims that the Lease has been breached, or remedies that either party has or may have under the Lease documents, in equity or at law, relating to any facts, circumstances, actions or failure to act by either party arising or occurring prior to the execution date of this SLA #4, including, without limitation, all claims which were raised or could have been raised in the Federal Litigation, or the appeal thereof, except as otherwise expressly reserved herein.

9. **Performance Bond.** The Receiver will require the General Contractor to obtain a Performance Bond within ten (10) business days of the execution of this SLA equal to \$46,061,063, the amount of the Receiver's contract with Receiver's general contractor, Skanska, which names the Receiver, Lender and the Government as co-obligees, for the purpose for guaranteeing construction completion and substantial completion of Phase I and Phase II of the Project and for the purpose of inducing the Government to execute SLA #4. Within thirty (30) days of receiving copies of the Performance Bond and an invoice from the Receiver, the Government shall pay to the Receiver the sum of \$134,934.40, which is the estimated cost of the premium relating to \$18,424,425.00 of coverage, said amount representing forty percent (40%) of the price of the contract between the Receiver and Skanska. Furthermore, the Government shall be named as a co-obligee on all other bonds issued in connection with the Project, including sub-contractor bonds, provided that there is no additional cost for doing such.
10. **Suspension or Reduction of Progress Payments.** The Contracting Officer shall not suspend or liquidate advance payments unless there has been a written Contracting Officer's final decision concluding that any of the following conditions exist and have gone uncorrected or insufficiently explained, as reasonably determined by the Contracting Officer for a period exceeding thirty (30) calendar days from the date of initial notification to Receiver:
  - a. The Receiver failed to comply with any material requirement of the Lease, as amended, that would substantially delay completion of the work, except for the work described in Paragraph 17(c);
  - b. The Receiver is delinquent in any material payment of any ground lessor, subcontractor, sub-subcontractor, or supplier under this contract active on the Project in the ordinary course of business. However, the Receiver shall have the right to contest in good faith any dispute with any ground lessor, subcontractor, sub-subcontractor, or supplier.
  - c. One or more of the Milestones (as defined below) have been missed.

In the event that the Government wrongfully suspends or delays any payments due under this Agreement, it shall be liable for any increased costs incurred by the Receiver, and the actual

number of days of delay documented to have been caused by such shall be added to the Milestones (as defined below). Furthermore, upon the curing of such deficiency or delivery of the item which caused advance payments to be suspended, the advance payments shall be reinstated.

11. **Content of Receiver's Draw Request.** The Receiver's request for advance payment shall contain the following:

- a. The name and address of the Receiver;
- b. The date of the request;
- c. The Lease number and/or other identifier of the contract (such as change order number) under which the request is made;
- d. Such information and documentation as is reasonably required to describe the basis for payment;
- e. A listing of the work completed, as described in the SOV for the basis for payment; and
- f. A certification by a Receiver official authorized to bind the Receiver, as specified in paragraph 12 of this SLA.

12. **Content of Receiver's Certification.** The Receiver shall make the following certification in each request for payment:

I certify to the best of my knowledge and belief that—

- a. This request for payment is true and correct; this request (with attachments) has been prepared from the books and records of the Receiver, in accordance with the Lease, as amended, the instructions of the Contracting Officer, and the negotiated Schedule of Values ("SOV");
- b. Except as reported in writing, all payments to subcontractors, sub-subcontractors and suppliers under this Lease performing work described in the SOV have been paid, or will be paid, currently, when due in the ordinary course of business (thirty (30) days in arrears);
- c. There has been no material adverse change in the financial condition of the receivership estate since the submission by the Receiver to the Government of the most recent written monthly report filed with the State Court and the Lender has not failed to provide the Lender Confirmation Letter to Skanska; and
- d. After the making of this payment, the aggregate amount of all payments in advance of substantial completion will not exceed any limitation in the Lease, as amended, including the retainage limitation as defined therein.

13. **Delivery Dates.** As reflected in the Diagrams attached to SLA #2 (4 pages corresponding to the 4 floors), subject to force majeure, Receiver agrees that Phase I will be delivered substantially complete not later than three hundred (300) days after the date the "Contingency" (as defined in

Paragraph 31 below) has been satisfied (the "Phase I Completion Date"), and that the remainder of the demised premises, Phase II, will be delivered substantially complete not later than three hundred sixty five (365) days after the date the Contingency has been satisfied (the "Phase II Completion Date") (the Phase I Completion Date and the Phase II Completion Date are hereinafter collectively referred to as the "Amended Dates"), with each delivery subject only to punchlist items which do not materially interfere with or materially diminish the Government's ability to occupy the space. The parties expressly agree that the Amended Dates apply and are to be construed for the purpose of altering the earlier required dates of Phase I and Phase II delivery. The Parties agree that within fourteen (14) business days after the date the Contingency has been satisfied, the Receiver will begin to assemble contractors, subcontractors, sub-subcontractors, and/or suppliers in a coordinated fashion so as to re-initiate construction with proper staffing to perform the work on or before the date which occurs thirty (30) days after the date the Contingency is satisfied.

Additional milestone dates (which collectively with the Amended Dates are hereinafter referred to as the "Milestones") are as follows:

- 1) Generators delivered and set on slab not later than ninety (90) days after the date the Contingency has been satisfied;
- 2) Auditorium framed (substantially complete) not later than one hundred and fifty (150) days after the date the Contingency has been satisfied
- 3) All walls painted and atrium ceiling (wood) hung (substantially complete) not later than two hundred and fifteen (215) days after the date the Contingency has been satisfied; and
- 4) Atrium flooring (Terrazo) installed (substantially complete) not later than two hundred and eighty five (285) days after the date the Contingency has been satisfied.
- 5) Delivery of the atrium glass panels and railings not later than three hundred and fifteen (315) days after the Contingency has been satisfied

In the event that the Government defaults under any material obligation hereunder, and the actual number of days of delay documented to have been caused by such shall be added to the Milestones.

Subject to the cure provisions of Paragraph 36 below, time is of the essence with respect to the Milestones.

14. **Limitation on Substitutions of Development Team.** Within fifteen (15) business days of satisfaction of the Contingency, Receiver shall provide: a copy of the executed contract with the executive architects of the A/E Firm, a copy of the executed contract with the Receiver's General Contractor, and the names of the Receiver's Construction Project Manager and Site Superintendant (the A/E Firm, General Contractor, Construction Manager and Site Superintendent, collectively, the "Development Team"). There shall be no substitutions in



Receiver's Development Team or other key individuals involved in managing the Project unless each such proposed new Development Team member or key individual (i) is approved in writing by the Government's CO, which approval shall not be unreasonably withheld, conditioned or delayed (after receipt of all information he deems necessary) and (ii) at a minimum, possesses equal or better qualifications and experience than the development team member and/or key individual to be replaced.

15. **Inconsistencies with Lease Provisions.** To the extent that the terms of this SLA #4 and other terms of the Lease (as amended by SLA #1, SLA #2 and SLA #3) are inconsistent, the terms of this Supplemental Lease Agreement shall control. All other terms and conditions of the Lease, as so amended, shall remain in full force and in effect.
16. **GSA's Contribution Toward Improvements.**
  - a. Existing Award Letters. The Government and the Receiver agree that the award letters in the amount of \$25,531,139 that have been issued by the Government shall be paid as follows. The work described on Attachment V which is attached to and made a part hereof has been completed by the Lessor (the "Completed Work"), and the Government agrees to pay the Receiver the value of such Completed Work. Within thirty (30) days after the satisfaction of the Contingency, as defined in Paragraph 31 herein, the Government shall pay to the Receiver the sum of \$11,728,593.00, which includes the Receiver's markup of 10%, which amount represents one hundred percent (100%) of the agreed upon value of the Completed Work. The Government and the Receiver agree that the unfinished work covered by award letters will be completed by the Receiver and paid by the Government, including the Receiver's markup of 10%, in accordance with the procedures set forth in Paragraphs 2, 3, 4 and 5 above and subject to the 15% retainage described therein.
  - b. Additional Award Letters. The Government and the Receiver agree that the Government will issue Additional Award Letters obligating the Government to pay for certain additional construction costs of the Project. The Government and the Receiver agree that the Government will pay the Receiver within thirty (30) days after the satisfaction of the Contingency for certain previously disputed costs totaling \$10,692,098, less 10% retainage, which amount includes the Receiver's markup of 10%, as described on Attachment III which is attached to and made a part hereof. These Award Letters represent a negotiated settlement of certain disputed costs, and included in the SOV. Additionally, the Government and the Receiver agree that the Government will pay the Receiver for: (i) the cost of the work described in paragraph 17(b) below which is estimated to be approximately \$3,850,000; and (ii) the cost of the services to be performed in connection with the installation of the furniture and shelving described in paragraph 17(c) below, which cost has not yet been determined or estimated. The additional costs, including the Receiver's markup, will be paid by the Government in accordance with the procedures set forth in Paragraphs 2, 3, 4 and 5 above, and subject to the 15% retainage described therein.
  - c. Payment of Other Amounts. To the extent that this SLA #4 does not expressly address how payments will be made by the Government with respect to any amounts owed in connection with the Award Letters or future Award Letters, then such amounts shall be payable by the Government to the Receiver in accordance with the provisions of Paragraphs 2, 3, 4 and 5

above.

17. **Government's Award for Design and Pricing of Certain Un-priced Tenant Improvement Work; Installation of Systems and Free Standing Furniture, including Compact Shelving.**
- a. The Government hereby awards the Receiver a fixed price award in the amount of \$135,712.00 to design the ten (10) separate items of work that are currently un-priced and which are described on Attachment VI that is attached to and made a part hereof. This paragraph constitutes the Receiver's **NOTICE TO PROCEED** to commence to design the agreed statement of work. This paragraph is intended to constitute a bilateral modification to the Lease and is issued under the "Changes" clause, Clauses 33 and 34 of the General Clauses. The Government hereby directs and the Receiver to proceed with such design work, and the Receiver agrees to proceed with the design work. The costs associated with the design work are included in SOV attached as Attachment III. The Design and Pricing costs will be paid by the Government in accordance with the procedures set forth in Paragraphs 2, 3, 4 and 5 above, and subject to the 15% retainage described therein. The Government shall evaluate and approve the Receiver's design work within five (5) business days of receipt of the design. If modifications to the design are required, the Receiver will make the required modifications and resubmit to the Government for final review and approval. The Government shall then have five (5) business days to review and approve the modified design. The actual number of days of delay documented to have been caused by the Government's failure to comply with the latter requirement shall be added to the Milestones.
  - b. Once designed, the Receiver agrees to seek pricing of the item to be designed by soliciting a price proposal from its primary subcontractor for such trade. Should the primary subcontractor's price proposal, plus the Receiver's markup of 10%, be not more than ten percent (10%) more than the Government's Independent Estimate (IGE) for the item to be designed, then the Government shall accept the price proposal and make award of the work. The IGE shall be withheld from the Receiver until after the Government receives the primary subcontractor's price proposal. If the primary subcontractor's price proposal, plus the Receiver's markup of 10%, is more than ten percent (10%) in excess of the IGE, then the Government shall deliver to the Receiver the IGE for the work in question which exceeded such amount, and the Receiver shall meet with the subcontractor in an effort to determine why there is a difference in pricing and whether any modification can be made to the subcontractor's proposed price. After meeting with the subcontractor, the Receiver will submit to the Government the Receiver's final price proposal, including the Receiver's markup of 10%. The Government shall evaluate the Receiver's final price proposal and will notify the Receiver of its intention to make award or not to make award, at its sole discretion, within five (5) business days. The actual number of days of delay documented to have been caused by the Government's failure to comply with the latter requirement shall be added to the Milestones. Should the Government make the award, the Receiver agrees to proceed with the statement of work at the price proposed in the Receiver's final price proposal. Once an award is issued by the Government, the Receiver and the Government agree that the SOV will be amended to incorporate the additional tenant improvement work. The costs of the awarded additional tenant improvement work will be paid by the Government in accordance with the procedures set forth in Paragraphs 2, 3, 4 and 5 above, and subject to the 15% retainage described therein.

- c. Additionally, the Receiver agrees to purchase, install, and coordinate all systems and free standing furniture, including compact shelving (collectively, the "Equipment") at the Government's expense. It is understood at this time that the cost of the Equipment has not yet been determined or estimated. The Government shall approve systems furniture design within sixty (60) days of receipt of design from the Receiver. The Government shall provide a systems and free standing furniture design to the Receiver. Once designed, the Receiver agrees to seek pricing of the Equipment by soliciting price proposals from at least three (3) furniture vendors selected by the Receiver. Additionally, the Government shall approve the pricing for the purchase and installation of the Equipment by issuing an Award Letter to the Receiver within sixty (60) days of receipt of pricing from the Receiver. The Government shall pay the Receiver a markup of 10% on the cost of the Equipment to coordinate the purchase and installation. The Receiver and the Government agree that the SOV will be amended to incorporate the purchase and installation of the Equipment. The cost of the Equipment (not including the service component), will be paid for by the Government directly to the Receiver within 45 days of acceptance by the Government; provided that the Government shall inspect the Equipment within five (5) business days of receipt of notice of delivery. This shall be accomplished by the Receiver through its general contractor ordering the Equipment from a qualified vendor to be selected by them, which upon receipt of a letter from the government indicating that it is the purchaser, is willing to wait for payment for such 45 day period. The service component relating thereto shall be paid by the Government in accordance with the procedures set forth in Paragraphs 2, 3, 4 and 5 above, and subject to the 15% retainage described therein. Upon payment by the Government for the Equipment, title to such shall pass to the Government, except to the extent any portion thereof becomes a fixture.
- d. Notwithstanding the foregoing language in sub-paragraph 17(c) above, in the event that the "low bid" as determined by the Receiver is not acceptable to the Government, the Government shall promptly inform the Receiver of such in writing describing the portions of the proposal which are unacceptable, and, to the extent possible, the changes which need to be made for it to be acceptable, and provide a period of ten (10) business days from receipt of said notice for the Receiver to obtain an amended bid which is acceptable. If by the end of the ten (10) business day period, the Receiver has not delivered an acceptable bid to the Government, the Government may elect to instruct the Receiver to discontinue its efforts to obtain a bid relating to the Equipment, in which event: (i) the Receiver shall retain title and possession of all materials and documentation relating to the Equipment which it generated and/or developed; and (ii) the Government shall be responsible for the purchase and installation of the Equipment, and shall not be obligated to reimburse the Receiver for the costs incurred by the Receiver (or its general contractor) in connection with the Equipment; provided however that should the Government request the Receiver to turn over materials/documents relating to the Equipment which were generated by the Receiver (or one or more of its contractors), the Government shall be required to pay a fee for such equal to the fees incurred by the Receiver for creating such. The Government's election not to accept the Receiver's bid proposal, as described above, shall not be deemed to be a default under this SLA-4.
- e. If the Government elects not to accept the Receiver's bid proposal, as described above, in accordance with Section 3.15G.3. of the SFO, the Government shall be permitted to store and install the Equipment which it will be purchasing for the Project at the site in a manner which will minimize disruption of the construction effort. In the event that the Receiver determines

that the storage or installation of the Equipment has either caused a delay in construction or additional cost to one or more of its contractors, it may file a claim with the CO under the Contract Disputes Act.

18. **No Additional Change Orders.** Except for the un-priced tenant improvement work and purchase and installation of the Equipment as referenced in Paragraph 17 above, the Government and the Receiver hereby agree that the Government will not request that any additional work requiring any additional change orders be constructed by the Receiver.
19. **Modification to the Program of Requirements.** The Government and the Receiver hereby agree to the following modifications to the Program of Requirements ("POR"), which modifications shall be at the cost of the Government:
  - a. Paragraph VIII is modified such that each two (2) workstations in the project shall contain one (1) non-protected circuit and three (3) uninterruptible power supply circuits.
  - b. There will be no buoy assembling in Room #126.
  - c. Paragraph IX is modified such that the x-ray equipment at the project loading dock will be an L3 model PX-23 1.
  - d. Paragraph IX is modified such that all lab equipment will comply with CR#28 (Revised), dated December 3, 2008.
  - e. Paragraph VI(j) is modified such that the Government waives the requirement for an STC 50 rating for all conference room glass walls at the Project. The Receiver will otherwise construct the Project so as to maintain an STC 36 rating throughout the conference room envelope and will perform noise insulation as recommended by the Project's Architect of Record.
  - f. Once an award is issued by the Government, the Receiver and the Government agree that the SOV will be amended to incorporate the additional/modified tenant improvement work described above in this Paragraph 19. The costs of the awarded additional tenant improvement work will be paid by the Government in accordance with the procedures set forth in Paragraphs 2, 3, 4 and 5 above, and subject to the 15% retainage described therein.
20. **Acknowledgement and Partial Waiver of Submission of Progress Reports.** The Parties acknowledge that, prior to and including the date of this SLA: 1) the Receiver cannot determine whether the Lessor submitted all of the progress reports required by paragraph 3.16 of the SFO and therefore 2) the Government waives submission of the required reports to the extent that any were not submitted. Paragraph 3.16 of the SFO shall remain in full force and effect as of the date of this SLA such that the Government's rights under this paragraph and the Receiver's obligations under this paragraph are not further modified.
21. **Non-Mission Critical Utilities Paid by the Government.**
  - a. The Government shall pay all gas and electricity charges associated with the operation of the Project. Within sixty (60) days after the delivery of the Project to the Government, the



Government shall contact the appropriate utility companies for the purpose of transferring the gas and electrical service account(s) to the Government's name; provided however, that the Government shall reimburse the Receiver for the utility bills during such sixty (60) day period.

- b. Pursuant to sub-paragraph (a) above in this Paragraph 21, the Government shall be entitled to an adjustment in the Annual Rent due to the Lessor. The established Annual Rent of Eight Million Eight Hundred Sixty Eight Thousand Two Hundred Forty and 00/100 (\$8,868,240.00), payable at a rate of Seven Hundred Thirty Nine Thousand Twenty and 00/100 (\$739,020.00) per month, shall be reduced by the amount of gas and electricity costs reflected on the GSA Form 1217. The Annual Rent shall be reduced by the annual fuel costs of \$13,438.10 and the annual electricity costs of \$384,329.66. Combined, the Annual Rent shall be reduced by \$397,767.76. The new Annual Rent shall be Eight Million Four Hundred Seventy Thousand Four Hundred Seventy Two and 24/100 (\$8,470,472.24) payable at a rate of Seven Hundred and Five Thousand Eight Hundred Seventy Two and 69/100 (\$705,872.69) per month.
  - c. Pursuant to sub-paragraph (b) above in this Paragraph 21, there shall be a downward adjustment of the "Operating Costs Base" as referenced in SF-2 Paragraph 6G and SFO Paragraph 3.5. GSA Form 1217 "Lessor's Annual Cost Statement" shall be amended as follows: Line 9 "Fuel" shall be reduced from (b) (4) to (b) (4) and Line 11 "Electrical" shall be reduced from \$ (b) (4) to (b) (4). Line 27 shall be reduced from (b) (4) to (b) (4). Similarly, SF-2 Paragraph 6G (and Section 3.5 of the SFO) shall reflect an "Operating Costs Base" as shown in the Revised GSA Form 1217 (discussed in Section 29 below).
22. **Financing Requirements.** Paragraph 3.23 of the SFO of the Lease is hereby revised as follows:
- a. The first Subparagraph C is hereby deleted in its entirety.
  - b. The second Subparagraph C shall remain lettered as Subparagraph C and shall remain the only Subparagraph C.
  - c. The First Subparagraph D is hereby deleted in its entirety.
  - d. The second Subparagraphs A, B, D and E are each hereby deleted in their entirety; provided however, that the Receiver agrees that in any deed transferring title to its interest as lessee under the Ground Lease to a third party, said transfer shall be made subject to the Government's rights under the "Purchase Option" set forth in the Lease.
23. **Shared Financing and Offer Incorporation.** Paragraph 6E of the SF2 of the Lease is hereby deleted in its entirety.
24. **Order of Precedence.** Paragraph 6N of the SF2 is deleted in its entirety and replaced in its entirety by the following: In the case of discrepancies between the Lease and the Ground Lease, the Ground Lease shall govern to the extent allowable by law. In the case of discrepancies between the SF2 and its attachments, the SF2 shall govern. In the case of discrepancies between the final offer documents submitted by Lessor and the SFO, the final offer documents

shall govern.

25. **Compliance Acknowledgement for Clauses 38, 40 - 43, and 46 of the General Clauses.** Notwithstanding the foregoing, the Government agrees that neither the Receiver nor the Lender shall be held liable or otherwise responsible for any failure by the Lessor to have complied with these specific General Clauses prior to the execution date hereof.
26. **Acknowledgement of Receiver Status.** The Parties acknowledge that the Receiver is a small business for purposes of Clauses 47 and 48 of the General Clauses and that to the extent the Receiver acts in the role of the developer pursuant to the Receivership Order, the Receiver shall not be required to submit a Subcontracting Plan. Furthermore, the Government waives all claims that it may have had for the Lessor's failure to comply with Paragraphs 47 and 48 of the General Clauses prior to the date hereof. If an entity other than Maryland Enterprises, L.L.C. or the Receiver shall become the Government's developer prior to substantial completion of the project, then such developer will comply with these clauses, as applicable.
27. **Change Orders.** Notwithstanding anything in the Lease to the contrary, including, without limitation, Paragraph 6 D of the Lease, the amount charged for Receiver's markup on any change order shall be ten percent (10%).
28. **Submission of As-Built Drawings.** Not less than thirty (30) calendar days prior to delivery of Phase I, the Receiver or Assignee shall provide to the Government the following As-Built Drawings which are available at such time: one (1) set of 4 mil mylars, three (3) sets of blue-line prints, three (3) set of computer-aided design diskette(s), with files of as-built plans showing all elements of the construction, including all base building features and encompassing all executed change orders. The diskette(s) shall be formatted in the latest release of AutoCad®, A.I.A. standard layering system and ARRIS by Sigma Design. Each diskette shall be labeled with building name, address, list of drawing(s), date of the drawing(s), and the Receiver's architect and architect's phone number. The digital data shall be delivered on 3-1/2 inch high density diskette and/or other media as directed by the Government. If requested by the Government, the Receiver shall provide a demonstration of the diskette and/or other media on GSA equipment using the Receiver's operator. Manuals shall accompany the disks and/or other media and the Receiver shall provide the following minimum information: file names, layer system, cell library images, and name. Within sixty (60) working days after the Government's occupancy of the entire Leased Premises, the Receiver shall provide any necessary updates to the foregoing, the cost of which shall be borne by the Government.
29. **Operating Costs.**
  - a. For purposes of determining Operating Cost adjustments, as discussed below, Operating Costs shall expressly include all costs and expenses incurred in each calendar year in connection with operating, maintaining, repairing, and replacement of any part of the Project, but excluding gas and electricity costs, and, notwithstanding anything to the contrary in Section 3.4 of the SFO, excluding all costs of obtaining insurance, building maintenance and reserves for replacement and lease commissions, and all management fees, as shown on lines 29-32 of GSA Form 1217 (the "Existing GSA Form 1217").



- b. The Government and Lessor agree that the Existing GSA Form 1217 no longer accurately reflects the Government's estimated operating costs for the first full year of occupancy of the Project because the data is very old and because it does not reflect the changes made in Section 21 above. Consequently, it shall be replaced by a new GSA Form 1217 as Exhibit E to SF-2, and attached hereto as Attachment VII, showing (b) (4) in costs in Section I thereof and shall be updated once based on actual results during the first full year of occupancy by the Government, as described below.

In order to accurately establish the Government's actual first year operating costs, the Lessor shall prepare and submit to the Government a revised GSA Form 1217 (the "Revised GSA Form 1217") which shall be based upon the actual operating costs incurred by the Lessor based on the Government's first full year of occupancy. This Revised GSA Form 1217 shall be certified by the Lessor based on an internally prepared audit, with back-up documentation (bills, receipts, invoices, etc.). This Revised GSA Form 1217 shall be submitted to the Government within 90 days after the 365<sup>th</sup> day of full occupancy by the Government.

Commencing as of the first day of the thirteenth (13<sup>th</sup>) month of the term of the Lease, this Revised GSA Form 1217 shall re-establish the "Operating Costs Base" for the balance of the term, and any extension thereof, for the purpose of Operating Cost adjustments in accordance with SFO Paragraph 3.4 "Operating Costs" and Paragraph 3.5 "Operating Cost Base." To the extent that the Revised GSA Form 1217 (Section I only) indicates that actual operating costs either exceeded or were less than the Operating Costs for the Base Year shown in GSA Form 1217 (Attachment VII hereto) (Section I only), an adjustment will be made to the rent, effective month thirteen (13) of the Lease for the next twelve (12) months. Thereafter, all future Operating Cost Escalations shall be made in accordance with Paragraph 3.4 of the SFO.

The provisions of this Paragraph 29 shall not affect the calculation of, or payment of, or payment of any increase in real estate taxes, which calculation and payment shall continue to be made in accordance with the terms of the Lease, including, but not limited to Section 3.3E of the SFO. In the event of a conflict between the terms and conditions of Paragraphs 21.b. and 21c. above, and this Paragraph 29, the terms and conditions of this Paragraph 29 shall govern and control.

"Operating Costs for the Base Year" as such term is used in Section 3.4 of the SFO shall be determined by the Revised GSA Form 1217. Except as modified herein, Section 3.4 of the SFO shall remain in full force and effect.

30. **Existing Construction.** Except as provided in Attachment VIII, to the Government's knowledge, (a) the portion of the Project that has been constructed to date complies with the terms of the Lease, and (b) no event exists, or which with the passage of time or notice would constitute a default by the Receiver under the Lease.
31. **Contingency.** This SLA is contingent upon the following (collectively, the "Contingency"): (i) State Court approval of this SLA; (ii) the modification of the Receivership Order which (x) authorizes the Receiver to take over control of the Federal Litigation and all of Lessor's claims and causes of action against the Government relating to the Lease, and (y) authorizes the Receiver to dismiss the Federal Litigation, if such is pending as of the date on which the

Contingency is satisfied; (iii) issuance of an Order from the United States Court of Appeals for the Federal Circuit, in which court an appeal from one or more rulings in the Federal Litigation is pending, dismissing the appeal; and (iv) execution of this SLA by the Government.

32. **Novation Agreement.** The Parties acknowledge that it is not the intent or purpose of the Receivership Order for the Receiver to own and operate the Project or the facilities. It is furthermore understood that subsequent to the completion of the Project, either the Receiver shall seek authority from the State Court to sell the Project and transfer obligations under the Lease to the purchaser or the Lender shall initiate foreclosure proceedings. Therefore, notwithstanding Sections 3.19(D)(3) and 3.19(G) of the SFO of the Lease, the Government agrees herein that upon such proposed transfers or any other approved transfer (in accordance with applicable law) of the Project, it will modify the required Novation Agreement such that, although the Government must approve any transferee, neither the Lender (or any affiliate thereof), Receiver, nor Maryland Enterprises, LLC shall be required to guarantee the performance of the approved transferee. Also, all of the provisions of the Subordination, Non-Disturbance and Attornment Agreement dated April 21, 2008 between the Government, ME and the Lender shall remain in full force and effect. Furthermore, once the Project is substantially complete, the Government agrees that it shall approve any transferee which it determines is acceptable pursuant to established criteria pertaining to the experience and financial capability of the proposed transferee, which consent or approval shall not be unreasonably withheld, and, in connection with such process, shall reasonably consider requests to modify this SLA-4. The foregoing sentence is not intended to preclude a request by the Receiver to the Government for it to approve a transfer of title prior to substantial completion, which request shall be evaluated based on then current regulations and practices; provided however, that in the event that the Receiver wishes to transfer title to the Project prior to substantial completion, it agrees that it shall not enter into any agreement to transfer title to the Project to any third party unless: (i) the Government approves the purchaser; (ii) said agreement requires the purchaser to keep the Development Team intact, assigns to the purchaser the contracts necessary to accomplish such and provides for the purchaser to assume all of the obligations under such contracts; and (iii) the purchaser agrees to be bound by all provisions of this SLA-4 (as such may be amended or supplemented as of such time). After a prospective purchaser is identified by the Receiver to take title prior to substantial completion and the contracting officer submits a list of requested additional information, the prospective purchaser shall have a period of five (5) business days to provide all Government requested documents necessary to obtain the Government's approvals in accordance with Section 3.19E. of the SFO and the contracting officer's reasonable discretion. Finally, in connection with any proposed foreclosure sale by the Lender (or any affiliate thereof) post-substantial completion, the Government shall conduct its approval process within a reasonable period of time subsequent to receipt of a written request of the Lender to approve one or more intended bidders at the foreclosure sale. In the event that the Lender (or any affiliate thereof) is the successful bidder at the foreclosure sale, and wishes to further transfer title to the Project to a third party and have such party assume the Lease, the Government shall conduct its approval process regarding the purchaser at the request of the Lender within a reasonable period of time subsequent to receipt of a written request by the Lender, which shall include reasonably acceptable documentation concerning the intended purchaser. The Government's approval of request by the Receiver or the Lender to approve a proposed purchaser pursuant to a foreclosure sale or other transfer post-substantial completion shall not be unreasonably withheld.

33. **No Risk.** Notwithstanding anything herein to the contrary, no risk or obligation incurred by the Receiver shall be the personal risk or obligation of Douglas P. Wilson, or the Douglas Wilson Companies, but shall instead be a risk or obligation of the Receivership estate.
34. **Bankruptcy of Maryland Enterprise.** Notwithstanding anything herein to the contrary, in the event that a bankruptcy petition is filed by or against Maryland Enterprise, L.L.C., the Receiver (working in conjunction with the Lender) shall be afforded a period of up to 150 days from the date of filing to either: (a) have such petition dismissed, (b) obtain a bankruptcy court order confirming the appointment of the Receiver or permitting the Receiver to remain in possession of the receivership estate, (c) have the automatic stay modified or (d) for the Receiver or Lender to obtain such other relief so as to permit the Receiver to continue fulfilling its obligations under the Lease and this SLA; provided that the Receiver and/or the Lender is diligently pursuing one or more of the preceding actions. In the event that the Receiver is authorized by the bankruptcy court to remain in control over the receivership estate, all Milestones shall be moved back by the amount of time that elapsed from the date of the petition until such authorization was issued by the bankruptcy court. In the event that the relief granted by the bankruptcy court was granted within 150 days from the date of the bankruptcy filing, but requires the Lender to foreclose on the property in order to gain control of such property, the Government shall take no action to terminate the Lease provided that Lender is proceeding diligently to foreclose on the Project. Furthermore, if the Lender becomes the owner of the property, the Government agrees to enter into a lease on the same terms as provided herein in order to permit Lender to complete construction, except that all Milestones shall be moved back by the amount of time that elapsed from the date of the petition until the date of the execution of the new lease.
35. **State Court Action.** The Government shall seek approval of this SLA by all necessary persons or agencies, and shall, prior to the Receiver filing a motion in the State Court seeking approval of his execution of this SLA, furnish a letter to the Receiver stating that it has obtained all necessary approvals and authorizations for it to execute the SLA immediately following the approval by the State Court of the Receiver's motion seeking approval of his execution of this SLA and authorizing his dismissal of the Federal Litigation, or if such litigation is not pending at the time, his release of all of the Lessor's claims and causes of action relating to the Lease. Upon receipt of such letter, the Receiver shall file a joint motion with the Lender in the State Court seeking authorization for the Receiver to execute this SLA and to modify the Receivership Order to authorize the Receiver to take over control of the Federal Litigation, and to dismiss the Federal Litigation, or if such litigation is not pending at the time, his release of all of the Lessor's claims and causes of action relating to the Lease. Upon obtaining such authorization, the Receiver shall dismiss the Federal Litigation with prejudice, or if such litigation is not pending at the time, release all of the Lessor's claims and causes of action relating to the Lease, in coordination with the Department of Justice. Upon receiving a proper request for such, and subject to its Touhy regulations, the Government agrees to provide a witness to testify before the State Court during the motions hearing referred to above that the Government has taken the benefits from the dismissal of the Federal Litigation into account and would not enter into this SLA without the dismissal of the Federal Litigation, that all necessary approvals have been obtained and that it intends to execute the SLA as soon as the State Court approves the Receiver's entry into such agreement and dismissal/release, as described above.



36. **Government's Default Remedies.** The Government's default remedies relating to the construction and/or delivery of the Project are amended as follows:

- a. The Receiver acknowledges that the partial construction of the facilities has no value to the Government without Government occupancy and Lease commencement; and the Government acknowledges that the Lender (which is providing a substantial portion of the funding for the Project) cannot be placed in a position where, despite the efforts of the Receiver and his General Contractor, there are unanticipated or unexpected delays, and the Government can terminate the Lease without the opportunity to apply corrective measures. The Government and the Receiver acknowledge that the failure of the Receiver to comply with the Milestones in Paragraph 13 above shall constitute an event of default (breach) under the Lease and this SLA-4. In the event that the Government believes that a breach has occurred which would entitle it to terminate the Lease or exercise any other default remedy other than to impose liquidated damages, before the Government shall have the right to terminate the Lease (or exercise any other default remedy other than to impose liquidated damages), it shall deliver written notice to the Receiver (with a copies to Lender and counsel for Lender: Louis J. Ebert), providing the Receiver with an opportunity to cure the noticed default(s) within a period of thirty (30) days, and if such default(s) cannot be reasonably cured within such period, such extended period of time necessary to cure the default(s) not to exceed ninety (90) days as long as the Receiver is diligently pursuing curing the default; provided further that in the event that the Government determines that the Receiver is not diligently pursuing the curing of the default, it shall deliver a second written notice to the Receiver (with a copies to Lender and counsel for Lender: Louis J. Ebert) notifying such parties of such determination. Within ten (10) business days of the receipt of such notice, either the Receiver shall deliver a written explanation to the Government stating why it disagrees with such determination or the Lender shall deliver a writing to the Government informing the Government how the Project is to be completed, e.g. by the Lender compelling the Receiver to replace the general contractor or making a claim under the Performance Bond. The cure rights set forth above shall pertain to all defaults under the Lease relating to construction of the Project which authorize termination of the Lease or any other default remedy. Notwithstanding the foregoing, if the Receivership Order is vacated or amended so as to divest the Receiver of control over the assets of the Receivership estate, other than as the result of a bankruptcy filing by the Lessor, this SLA shall become null and void at the election of the Government.
- b. All provisions in the Lease, including the Exhibits thereto, which provide for the imposition of damages in the event of a default by the Lessor (now the Receiver), including, but not limited to, and Section 3.10 of the Solicitation for Offers and Section 11 of the General Clauses, are deleted. The Government's sole remedy for breach of contract other than termination, as modified herein, shall be limited to a delay damages in the form of liquidated damages equal to \$5,000.00 per day of delay in the substantial completion of Phase II, commencing on day 11 of any delay in the delivery of the substantial completion of Phase II, as the delivery date(s) may be extended pursuant to the terms of this SLA-4; provided however, that Phase II shall not be deemed substantially delivered unless and until Phase I is also substantially completed.
- c. Notwithstanding anything above to the contrary, upon occupancy by NOAA, all of the Government's default rights and remedies provided in the Lease shall be fully reinstated as to all defaults initially occurring post-occupancy.

37. **Receiver's Default Remedies.** The Receiver shall have all legal and equitable remedies available under the Contract Disputes Act in the event of a breach of this Agreement by the Government

38. **Conflicts.** In the event of a conflict between the terms of this SLA-4 and other terms of the Lease, the terms of this Supplemental Lease Agreement shall control. All other terms of the Lease, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have subscribed their names as of the above date.

RECEIVER: Douglas P. Wilson

(b) (6)  
BY [Redacted]  
(Signature)

IN THE PRESENCE OF (witnessed by:)

(b) (6)  
[Redacted]  
(Signature)

UNITED STATES OF AMERICA Mark Stedman

(b) (6)  
BY [Redacted] Contracting Officer, GSA, NCR, PBS  
(Title)

IN THE PRESENCE OF (witnessed by:)

(b) (6)  
[Redacted]  
(Signature)

March 7, 2011

[Handwritten signature]

**LIST OF ATTACHMENTS**

Attachment I – Receivership Order

Attachment II – Award Letters

Attachment III – Schedule of Values

Attachment IV - Lender Confirmation Letter

Attachment V - Completed Work

Attachment VI - Breakout of \$135,712

Attachment VII - New Form 1217

Attachment VIII - Work Not Acceptable to GSA



ATTACHMENT I

Receivership Order

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ATTACHMENT II  
AWARD LETTERS

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# NOAA Center for Weather and Climate Prediction (NCWCP)

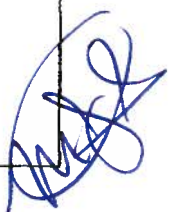
## Listing of GSA Award Letters

Description	Reference	Authorized Amount (excl. OHP)	GSA Award Letters
Design Awards:			
TI Package	TI Design	(b) (4)	
PCO's:			
501	Antenna Pad		
502	Ground Mounted Antenna		
503	Shelter-In-Place		
504	Employee Entrance		
505	Cupola Platform		
506	Mechanical Upgrade		
510	Media Boxes		
513	Garden Plaza		
514	Electrical Investigation		
516	ET Lab and SOCD Lab		
517	Circadian Lighting		
518	Skylights		
519	Deli		
552	IDF/UPS		
553	Data Center Design		
558	Enhanced Landscaping		
Total PCO's			
Total Design Awards			
Construction Awards:			
TI Package:		(b) (4)	
T13	Misc. Metals		
T15	Millwork		
T16	Stone Surfaces		
T21	Interior Glazing		
T22	Doors & Frames		
T25	Drywall		
T29-30	Flooring & Carpet		
T31	Paint & Wall Coverings		
T33	Toilet Partitions		

T33, 36, 39, 44, 50	Misc. Equipment
T38	Operable Partitions
T40	AV Equipment
T45	Lab Equipment
T46	Blinds & Shades
T47	Auditorium Seating
T49	Security
T53	Electrical
Subtotal	
Less: TI Allowance	
Total TI Package	
PCO's:	
501	Antenna Pad
503	Shelter-In-Place
504	Employee Entrance
505	Cupola Platform
506	Mechanical Upgrade
506B	Electrical Upgrade
506B	Long Lead/Generators
510	Media Boxes
513	Garden Plaza
518	Skylights
519	Dell
551	CADD Files
552	IDF/UPS
561	Telecom Cabling
Total PCO's	
Total Construction Awards	
Markup (OHP):	Total Awards
Design (TI) - 10%	
Design (PCO's) - 10%	
Construction (TI Allowance) - 8%	
Construction (TI Above Allowance) - 10%	
Construction (PCO's) - 10%	
	Subtotal
Less: TI Allowance	
	Total Markup
	Total Adjusted/Markup Awards

(b) (4)

ATTACHMENT III  
SCHEDULE OF VALUES

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a set of initials or a name written quickly.

ATTACHMENT IV

LENDER CONFIRMATION LETTER

Douglas P. Wilson, as Receiver  
c/o Douglas Wilson Companies  
450 B Street, Suite 1900  
San Diego, CA 92101  
Attn: Brad Ebright

Re: NOAA Project

Dear Mr. Ebright,

Bank of America, N.A. ("Bank") has consented to: (a) SLA-4 between the United States Government Services Administration ("GSA") and Douglas P. Wilson ("Receiver"), Receiver for Maryland Enterprise, LLC dated February \_\_, 2011, approved by the Circuit Court for Prince Georges County, Maryland in Case No. 2009 CAE09-22511; (b) a contract ("Contract") dated February \_\_, 2011 between the Receiver and Skanska USA Building Inc. ("Skanska"); and (c) the Budget delivered by Skanska in connection therewith, all of which relate to the construction of a research facility at 5840 University Research Court, Riverdale, Maryland 20737 ("Project").

The Bank certifies that it has committed to Receiver sufficient funding to enable Receiver to incur its obligations set forth in the Contract, including all obligations for payment to Skanska, subject to the provisions of the new loan documents to be executed by the Receiver or an affiliate thereof. Specifically, the Bank is certifying that, as of the execution date of this letter, it has funded to Receiver all amounts owed to Skanska as of the date of the last requisition and has sufficient funding for all amounts required to complete the Project including all approved change orders contemplated under Paragraph 17 of SLA-4.

The Bank agrees to fund such Contract to the Receiver on a monthly basis, subject to the provisions of the new loan documents to be executed by the Receiver or an affiliate thereof, based on the requisitions transmitted by Receiver in accordance with the terms of the Contract and the Schedule of Values attached thereto, as the same may be amended, and approval by its inspector. The Bank agrees to fund the monthly requisitions in a manner which will enable the Receiver to pay Skanska all amounts then due in accordance with the terms of the Contract. All advances to be made by the Bank shall be made pursuant to the Promissory Note to be executed by \_\_\_\_\_ and secured pursuant to the Amended Indemnity Deed of Trust of even date herewith to be executed by the Receiver.

The Bank's obligations hereunder shall be delegable to a note purchaser, provided that such third party expressly assumes in writing all obligations of the Bank and, upon request, provides Skanska with reasonable evidence of its ability to fund such obligations. The term "Bank" as used in this letter shall include in its meaning its successors and assigns.

The Bank acknowledges that the certifications included in this letter constitute a



material inducement for Skanska to agree to the other terms to the Contract. The Bank understands that, pursuant to the terms of the Contract, in the event that a copy of this letter is not provided to Skanska by the Receiver on a monthly basis, subject to the Receiver's right to cure defaults, Skanska shall have the right to Stop Work and will not have the obligation to recommence its work under the Contract unless and until all outstanding monies then owed are paid in full and a copy of this letter has been provided to Skanska.

In consideration of the funding by the Bank, the Receiver agrees to: (i) assign all of the warranties provided by Skanska and each of the sub-contractors to the Bank or to a third party purchaser of the project, as directed by the Bank; and, in the event that the Receivership is to be terminated, (ii) assign the construction contract and all of the sub-contracts to the Bank or to a third party purchaser of the project, as directed by the Bank. The Receiver also agrees to immediately turn over to the Bank all payments received from GSA pursuant to SLA-4.

Sincerely,

Traci K. Craig,  
Vice President

Agreed to:

Douglas P. Wilson, Receiver

ATTACHMENT V  
COMPLETED WORK

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ATTACHMENT VI

\$135,712 ADDITIONAL DESIGN WORK

**NOAA Center for Weather and Climate Prediction  
(NCWCP)**

**Summary of Design Proposals Submitted by HOK Architects**

<u>Proposal Description</u>	<u>Amount</u>
1. Cable Plant/Data Center Redesign	(b) (4)
2. Enhanced Lighting	
3. Deletion of Training Room	
4. Security Changes	
5. Visitor Kiosk & Lobby Glass Wall	
6. Audiovisual Changes	
7. Cupola Opening in Roof	
8. Enhanced Landscaping	
9. X-Ray at Loading Dock	
10. Power to System Furniture/IDF Room Redesign	
Total	<u>\$135,712.00</u>

ATTACHMENT VII

GSA FORM 1217

(b) (4)



GSA DC 85-3281

GSA FORM 1217  
JUL 94

ATTACHMENT VIII

WORK NOT IN COMPLIANCE

1. Mold occurrence on 1st and 2nd floor - north side of bldg.
2. Loading dock constructed poorly and thus not useable per the SFO design standard.
3. Structured Parking Garage contains some low hanging pipe which restricts parking. Lease requires 700 parking usable spaces.
4. Freight elevator partially blocked on the penthouse level preventing offload of large equipment.

WORK CLAIMED BY GSA TO BE NON-COMPLIANT

1. Main UPS batteries not adequately maintained/charged during stop-work period leading to potential system life/performance issue.
2. HVAC system partially charged with untreated water leading to high corrosion potential.
3. Potential reduced system life/performance issues with generators because they have been stored outside for 3+ years unused.

ND: 4849-2723-4054, v. 16